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18 Counsel for Plaintiff and the Class

19 UNITED STATES DISTRICT COURT  
20 CENTRAL DISTRICT OF CALIFORNIA  
21 WESTERN DIVISION

22 NICOLAS TORRENT, on Behalf of  
23 Himself and All Others Similarly  
24 Situated,

25 Plaintiff,

26 vs.

27 YAKULT U.S.A., Inc.,

28 Defendant.

No. 8:15-cv-00124-CJC-JCG  
CLASS ACTION

**PLAINTIFF'S MEMORANDUM OF  
LAW IN SUPPORT OF HIS  
MOTION TO DISMISS FOR LACK  
OF JURISDICTION**

Date/Time: August 29, 2016/1:30 p.m.  
District Judge: Hon. Cormac J. Carney  
Courtroom: 9B  
Trial Date: January 10, 2017

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1 Plaintiff Nicolas Torrent (“Plaintiff”) respectfully moves to dismiss for lack  
2 of jurisdiction and, in support thereof, Plaintiff states:

3 1. Plaintiff filed this putative class action under California’s Unfair  
4 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§17200, *et seq.* against  
5 defendant Yakult U.S.A., Inc. (“Defendant”) arising out of Defendant’s allegedly  
6 deceptive yogurt product called Yakult.

7 2. On January 5, 2016, this Court denied Plaintiff’s motion for class  
8 certification under Rules 23(b)(1), (2), determining, *inter alia*, that Plaintiff does  
9 not have standing to seek injunctive relief under the UCL. [Dkt. No. 52].

10 3. On March 7, 2016, this Court denied Plaintiff’s renewed motion for  
11 class certification under Rule 23(b)(2), again determining, *inter alia*, that Plaintiff  
12 does not have standing to seek injunctive relief under the UCL. [Dkt. No. 56].

13 4. On account of the uncertainty of the outcome of *Jones v. ConAgra*  
14 *Foods, Inc.*, No. 14-16327 (9th Cir.), which has now been stayed by the 9th Circuit  
15 Court of Appeals pending the outcome of the U.S. Supreme Court’s resolution of  
16 *Microsoft Corp. v. Baker, et al.*, No. 15-457, Plaintiff has not sought Rule 23(b)(3)  
17 class certification in this case.

18 5. Thus, if this Court does not believe that Plaintiff has standing to seek  
19 classwide injunctive relief under the UCL pursuant to Rule 23(b)(2), then the  
20 amount in controversy is below the jurisdictional threshold for federal court under  
21 28 U.S.C. §1332, and the requisite diversity does not exist. Accordingly, this Court  
22 would not have jurisdiction over this case and it is incumbent upon this Court to  
23 dismiss this case for lack of jurisdiction. *Compare, e.g., Atwi v. Wells Fargo, N.A.*,  
24 No. SACV 13–00955–CJC(MANx), 2014 WL 997389, at \*1 (“If the court  
25 determines at any time that it lacks subject-matter jurisdiction, the court must  
26 dismiss the action.”) (Carney, J.) (internal citation omitted).

1           6.     Upon dismissal, and respectfully, Plaintiff intends to appeal this  
2 Court's determinations including but not limited to this Court's determinations that  
3 Plaintiff does not have standing to seek injunctive relief under the UCL pursuant to  
4 Rule 23(b)(2).

5           WHEREFORE, based on the foregoing, additional submissions, and  
6 submissions *ore tenus*, Plaintiff respectfully asks this Court to grant this motion.

7 DATED: July 27, 2016

8                               /s/ Cullin O'Brien

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